Previous references.

1902

(Sep. Rev.)

File No. 37 of 02-03

Serial Nos. 1—5

Later reference.

S.R. 88 of 03-04. Sl. 1 & 2.
B of Files.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 — 5.

Part B. for

SUBJECT.

Refund of Excess Stamp duty and penalty levied on a power of Attorney.

Table of Contents.

Sl. 1. No. 1605. dy. 6-12-02. From P. Subba Rao, Bangalore City, praying that the amount of duty and penalty levied by the Dt. Judge Hassan*, with the costs of this application, may be ordered to be refunded to him, and if not, at least, the penalty of Rs. 40 may be ordered to be refunded to him.

Fl. 833

Sl. 2. No. Fl. 328 dy. 1-2-03. To the Govt. Advocate, Bangalore. Forwarding for early expression of opinion the above petion.

Sl. 3. No. 31 dy. 5-8-03. From the Govt. Advocate. Stating that the power of attorney is properly stamped, that there is no G. R. S. 58 provision in the Stamp Act, empowering the Chief Controlling Rev. Authority to order a refund of any excess of Stamp duty and penalty and that Sec. 61 of the Stamp Act does not apply to the present case.

Fl. 2&4

P.T.O.

Sl.4. No. Fl.907-9 dt. 21-9-03. To D. C. Hassan; the Registrar, Chief Court; & the

Observing that a 'trans-action' as used in the Schedule of the Stamp Regulation should be distinguished from an 'act', that the power of attorney relates to a single transaction, that the excess duty and penalty levied will therefore be levied to the petitioner, and that the opinion of the Govt. Advocate seems opposed to Sec. 45.

Sl.5. No. Fl. 941 dt. 25-9-03 To P. Subba Rao.

Endorsement stating that orders have been issued to D. C. Hassan directing the refund of the Excess duty and penalty levied on him.

OFFICE OF THE DEWAN OF MYSORE

REVENUE AND GENERAL, DEPARTMENTS.

Short Office Note.

*Subject

Petn no: 1605 of 6.12.02 from P. Subba Rao residing in Channarayapete, Bangalore city.

Appeal against the order of the Dist Judge of Hassan levying excess Stamp duty and penalty on a special power of attorney presented by him.

Note

On 1st Sept 1902 a special power of attorney was executed on a stamp paper of the value of a rupee by P. Raghavendra Rao, petitioner's father, appointing the petitioner as his attorney to do all acts necessary for recovering all the moneys due to him in the execution of a decree obtained by him against P. A. Nagiah Naidu, defendant, in execution case no: 13 of 1901 on the file of the District Judge's Court, Hassan on the 8th Sept 1902 it was presented to the Dist Judge, Hassan, who passed the following order thereon:—

The power of attorney is stamped with one rupee apparently as coming

* No. and date of letter, from whom, catch words to denote nature of Subject should be stated, in red ink.

One form may be used for more than one letter of the same file as long as there is space. The Office Note should be in black ink. Write only on side of this form.

cl (b) 46 Schedule 1 of the Stamp act. It refers however to more than one transaction and empowers the holder of it to act generally also in the matter of the execution of the decree and consequently more approximately comes under cl (c). The proper stamp payable is therefore Rs 45 and not one. The necessary duty and penalty amounting to Rs 44 should therefore be paid before any action can be taken on the application.

The petitioner paid the excess duty and penalty as was demanded of him on the spot.

In his present appeal to Govt the petitioner represents that, though the power of attorney referred to authorised him to act on behalf of his father in the execution of the decree only in a single case, it was held by the Dist Judge of Hassan to refer to more than one transaction and empower the holder of it to act generally also in the matter of the execution of the decree and the excess duty and penalty recovered from him. He now prays for the refund

of the total amount of Rs 46 paid by him,
or, if the District Judge's opinion is held to
be correct, the refund only of the amount
of ~~fine~~ penalty, viz, Rs 40 paid by him.

The application is within the
time allowed under section 45 cls (1) & (2).

Submitted for orders.

11/10/03

11/10/03.

Let me see this with the
file in which the 2nd Cr
has raised the question whether this
should not be dealt with by the

Hon Councillor.

I think the District Judge is
wrong. Let me see the Regn
however.

13/2

Submitted. Mr Scrafton

a copy of the Mysore Stamp Regn
is sent up along with the files referred
to by the Secretary.

12/3/03 12/3/03

Transaction is different from
rent, and this power of attorney

which relates to the execution of a simple decree falls under Cl (b) r 2 of O XXI C.P.C. Draft an order accordingly & submit for approval to the Dewan through the 2nd Councillor. The refund of excess levied should be authorised.

14/8/13

Submitted with drafts.

14/8/13

Dewan through the 2nd Councillor.

8/3/13

Mis 251/9-3-03 Camp Mysore

Has this question been settled? I continue to be of the opinion I have already expressed.

The view taken by the Secretary is correct. I therefore do not consider it necessary to deal with this case, & agree to the order proposed.

20/3/03

9211/21.3.03

Government has decided that such questions may be dealt with by me. I have accordingly perused this case and I continue to be of the opinion

~~The petition~~ I have already recorded ~~in detail~~ - I agree to the order proposed - ✓

1/6/03

12/6/03
Since submitted to the Dewan and recorded with concurrence on the file

Submitted. N Mr 1/6

With reference to the Dewan's order of 6.7.03 on the draft petition, it is submitted that enquiry was made in the Genl Records and the Judicial branch, and also in the Chief Court. but no precedent is forthcoming.

N.V.
21/7/03

N
23/7/03

25/7

N 25/7/03

To the Dewan.

11738
25.7.03

Consult the Govt Advocate

26.VII

28/7/3

30/7/03

Note continued.

The Govt Advocate was accordingly consulted in the matter. He reports that the power of attorney is properly stamped under Article 46 cl (b) of Schedule I of the Stamp Regulation, that it does not fall under cl (c) as it relates to a single transaction, that there is no provision in the Stamp Regulation empowering the Chief Controlling Revenue Authority to order a refund of any excess of Stamp duty and penalty, as the applicant, instead of paying the duty and penalty as ordered by the Court, should have obtained the opinion of the Dy Comr under Sec 31, and that Sec 61 of the Mysore Stamp Regn does not apply to the case in Question.

Submitted for orders.

Addl. Regr
26/8/03

N
26/8/03

The opinion of the Govt Advocate that the Stamp Regulation ~~is~~ contains no

7

provision authorising a refund in such cases is astounding. S. 45 is the authority directly on the matter.

Draft authorising refund and drawing A's attention to the extraordinary mistake is submitted for approval.

28/8/03

To the Dewan,
through the 2nd. Councillor.

Recd at 5.30 pm.
29/8/03.

Submitted with draft.
29/8/03

Agreed
3/9/03.

(Fair draft plain)

298
3.9.03

Submitted with fair draft.

9/03

Fair draft
9/8/03

12929
12.9.03

The Dewan

Read

Petition no: 1605 of 6.12.02 from P. Subba Rao, residing in Chamarajendrapet, Bangalore city.

Order thereon.

A power of attorney dated 1st Sepr. 1902 was executed on a stamp paper of the value of one rupee by P. Raghavendra Rao appointing the petitioner as his agent and attorney to apply for and obtain all the moneys due to the former and remaining in Court on his account realized or to be realized in the execution of the decree obtained by him against P. R. Nagaya Naidu in O.S. no 825 of 1887 on the

file

file of the Sub-Judge's Court, Bangalore, and to sign all applications for further execution and documents and grant all receipts and discharges as may be lawful and expedient.

In this case no: 37 of 1902-03 on the file of the District Judge, Hassan, the petitioner produced the power of attorney and applied for permission to draw certain money in deposit and for the issue of a warrant for the attachment of the pay of the judgment debtor. The District Judge in his order ~~dated~~ dated 8.9.02 held that the power of attorney referred to more than

one transaction and em-
powered the holder of
it to act generally also
in the matter of the exe-
cution of the decree and
that the proper duly
~~leviable was~~ payable
was Rs 5/- under cl 46(c)
Schedule I of the Mysore
Stamp Regulation. The
payment of the necessary
duly and penalty, amoun
ting in all to Rs 44/- was
then ordered and the peti-
tioner paid the amount
He now appeals to Govt
alleging that the power
gave authority to the pe-
titioner to act on behalf
of his old father in the
execution of the decree
in a single case and was
properly stamped as

falling under cl. 46(b) ~~of~~ Schedule I
~~Sec 46~~ of the Stamp Regulations,
that the petitioner was not
given an opportunity to
explain his case, and
that the District Judge
failed to distinguish
an act from a transac-
tion, and praying for the
refund of the duty and
penalty levied.

I ~~do~~ observe that a
"transaction" as used in the Schedule of the St. Regns should
~~is different~~ be distinguished from an
from an ~~act and the~~ the power "act", as many acts may be
of attorney in question involved in a single transa-
~~which~~ relates ction.
to the execution of a single
decree falls under cl 46(b) and not (c)
Schedule I of the Stamp Regu-
lation. The excess duty and
penalty levied will therefore
be refunded to the petitioner.

However
We will not
vide it is best
we will use
decided as in
other cases
order
You are
be put
6.VII.03

Secretary

17/3/03.

The Dy Com
" Registrar, Chief Court
in Mysore.

Subs

1) Two rupees stamp. appl.
(Stamp sufficient)

2) Order complained of
produced

3) Power.

24
17.12.02

To Rev B (FC)

17/12/02

Rec'd
-30 a.m
-2.12.

Submitted with a note.
AK
26/1/03

REVENUE DEPT.
G.O. No. K833 190
DEC. 18 1902

No. 1605 Serial No. 1

Name of Petitioner P. Subbarao residing in

Village Channarajpett

Taluk Bangalore

District City

Date of Arzi 6-12-02

Date of Receipt do

Date of Disposal

No. of Enclosure Two

Appln addressed to the C'r. of Controlling Rev: authority under Sec: 45 of the Mysore Stamp Regn II of 1900

ABSTRACT

Petr. appeals against the order of the Dist Judge of Hassan (copy enclosed) levying duty and penalty on a Power of Attorney produced with this appln.

The grounds of appeal are:-

1. That he presented to the said Dist Judge a special Power of attorney authorizing the petr to perform certain acts on behalf of his father in Execution case No 13 of 1901-02 on the file of the Dist Judge Hassan.

2. That the said power of attorney authorizing him to act on behalf of his father (whose age did not allow of his going from Bangalore

MGCPB—4,000—31-1-02

to Hassan) in the Execution of the decree in a single case was rightly stamped as falling under clause 46 (b) Schedule I of the Mysore Stamp Reg.n II of 1900. and that it did not authorize him to act generally for his father, nor had the petr authority to act in more than the Execution of a single case obtained by his father

3. That the learned Judge however held that the power of attorney ought to have been more appropriately stamped under Cl: 46 (c) Schedule I of the Stamp Regn and without giving the petrs an opportunity to explain his case ordered the payment of duty & penalty amounting to Rs 64 which amount the petr at once deposited in the Court

4 That the learned Judge erred in holding that the Power of attorney referred to more than one transaction, the error having arisen from the Judge having failed to distinguish between an act and a transaction and that a transaction might consist of several acts and a power of attorney which gives authority to perform several acts necessary for a transaction is not a General Power of Attorney,

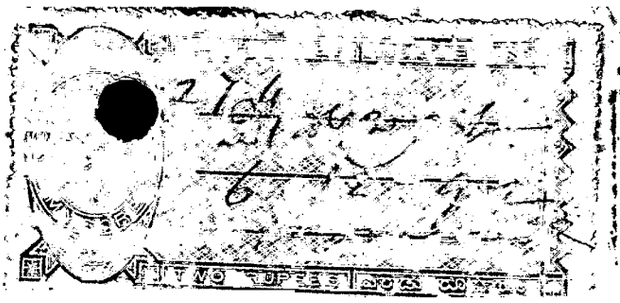
that

5 That the learned Judge also erred in holding that the Power of attorney empowered the petr. to act generally in the matter of the Execution of the decree, the Execution of the decree being a particular stage towards satisfaction of the decree. Authority to act in this stage of a particular decree cannot be construed to mean authority to act generally, & that it is merely power to act in a particular proceeding and that the interpretation put on the word "generally" by the Dist. Judge is opposed both to the ordinary usage of the word and the meaning, the word bears, in (Schedule I) Cl: 46 (c) of the Mysore Stamp Regn. II of 1900.

6 That for the above reasons petr. prays that the amount of duty & penalty levied by the Dist. Judge of Hassan, together with the costs of this application may be ordered to be refunded to him and that if however it is found that the Power of attorney should be stamped under clause 46 (c), prays that in exercise of the discretionary powers vested in the Chief Controlling Revenue authority, the penalty of Rs. 40 levied on the petr. may be ordered to be refunded to him

Enclosures:—
1 Power of attorney
2 order of the Dist. Judge of Hassan. } in English

17/12



MYSORE DEWAN'S OFFICE
PETITION DEPARTMENT
REGD. NO. 1605 R
DATE 6-12-1902

P.P. Amt 6/12/1902

To The Chief Controlling Revenue Authority Government of Mysore Bangalore

Two Rupee stamp affd.

Two Enclosures

Application under Section 45 of the Mysore Stamp Regulation II of 1900.

1605

The humble Petition of P. Subba Rao residing in Chamarajan drapette Bangalore City.

1 The Petitioner presented to the District Judge of Hassan a special power of attorney (Copy of which is hereunto annexed) authorizing the Petitioner to perform certain acts on behalf of his father in Execution Case No 13 of 1901-02 on the file of the District Judge's Court Hassan

2 That this power of attorney gave authority to the Petitioner to act on behalf of his father (whose old age did not allow him to undertake the journey to Hassan from Bangalore where he lives) in the Execution of the decree in a single Case and was therefore stamped as rightly falling under Clause 46 (b) Schedule I of the Mysore Stamp Regulation No II

5

of 1900. It did not authorize the Petitioner to act generally for his father; nor had the Petitioner Authority to act in more than the execution of a single decree Obtained by his father.

3 The learned District Judge however held that the power of attorney ought to have been more appropriately stamped under Clause 46 (c) Schedule I of the Stamp Regulation, and without Giving the Petitioner an opportunity to explain his Case ordered the payment of duty and penalty Amounting to Rs 44/-. The Petitioner immediately deposited the amount in Court.

1 1. The learned District Judge erred in holding that the Power of Attorney referred to more than one transaction, the error having arisen from his having failed to distinguish between an act and a transaction. A transaction might Consist of several acts and a power of attorney which Gives Authority to perform several acts necessary for a transaction is not a General Power of attorney.

5 The learned District Judge also erred in holding that the power of attorney empowered the Petitioner to act generally in the matter of the execution of the decree. The execution of the decree being a particular stage towards Satisfaction of the decree authority to act in this stage of a particular

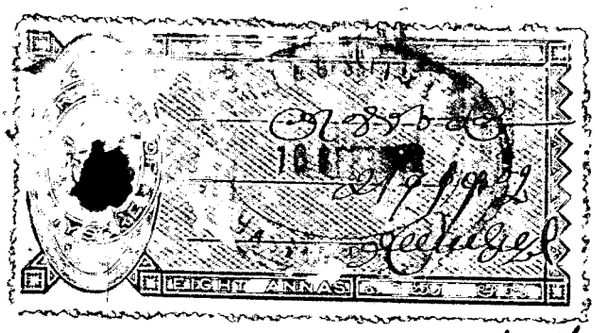
decree cannot be construed to mean authority to act generally. It is merely power to act in a particular proceeding. The interpretation put on the word "generally" by the learned District Judge is opposed both to the ordinary usage of the word and the meaning which the word bears in (Schedule I) Clause 46(C) of the Mysore Stamp Regulation No II of 1900

For the above reasons the Petitioner most respectfully prays that the amount of duty and penalty levied by the District Judge of Hassan together with the Costs of this application may be ordered to be refunded to him. If however it should be found that the power of attorney should be stamped under clause 46(C) the Petitioner humbly prays that in exercise of the discretionary powers vested in the Chief Controlling Revenue Authority the penalty of Rs 40/- levied on the Petitioner may be ordered to be returned to him.

Copies of the Power of attorney and the District Judge's order are annexed to this Petition.

6th December 1902
Bangalore

P. Subba Rao
Chamarajandrapette
Bangalore City



Original suit No. 825 of 1887 on the file of the Subordinate Judge's Court Bangalore.

Execution Case No. 89 of 97-98 on the file of the Subordinate Judge's Court Shimoga.

Execution Case No. 13 of 1901-02 on the file of the District Judge's Court Hassan.

Miscellaneous appeal No. 56 of 1901-02 on the file of the Chief Court of Mysore.

Plaintiff and decree holder
P. Raghavendra Row

Defendant and Judgment Debtor
P. R. Nagiah Naicker

P. Raghavendra Rao the decree-holder residing in Bangalore do hereby appoint and retain my son P. Subba Rao resident of Bangalore to be my true and lawful agent and attorney to apply for and obtain all the moneys due to me, and remaining in Court on my account realized or that may hereafter be realized in the execution of the decree obtained by me against the defendant and to sign all applications for further execution and documents and grant all receipts and discharges

discharges as may be necessary. I am to and expedient and I hereby agree to be bound by all his acts, always acknowledging the same to be done as well as effectually as if I were personally present. As witness my hand this 1st day of September 1902

Execution of this is admitted by P. Raghavendra Rao in Court.

(Signed) S. Varadaraja Iyengar
Principal Munsiff
Bangalore
1/9/02

No 284

30 1902

A sum of Rs 44-00 has been levied on this document from Petitioner Subba Rao on account of duty and Penalty and remitted to the District Treasury Hassan.

(Signed) S. R. Subbaraya Iyer
District Judge
8/9/02

Compared
S.K. Sundaram Iyer

True copy
Sheristadar

Copy applied for by P. Subba Rao Petitioner 9. 9. 902
Copy ready for delivery on 11-9-02
Copy delivered on 11-9-02

No of words 225
Copying fee 0-4-6
Comparing fee 0-1-0
Total 0-5-6

Payment received
Rs Ramachandra

To

The Govt Advocate

Bangalore

Serial No. 2.

No. H 3288 1-8-03.

dated.

Hereto honour to forward ~~to forwarding~~ herewith duly Expressed Petition
with ~~in original~~ petition no: 1605 & 6-12-02 (Returned)
from P. Subba Rao, Lekhamarajendrapet, Bangalore city, ~~with its enclosure~~
praying for the refund of the excess stamp duty and penalty recovered from him by the District Judge of Hassan on a Power of attorney presented by him, ~~has the honour to request that the Govt~~

Advocate

13

Advocate will be good enough
to furnish his opinion
as to whether the refund of duty as well penalty
prayed for by the petitioner
may be granted.

S.O

1
30/7/03

for Sec.

xx
30/7/03

Copd
1-7-03.

Read Serial No. 4.

Petition no: 1605 & 6-12-0
from P. Subba Rao, residi
in Chamarajendrapet,
Bangalore city, praying
for the refund of the
excess duty and penalty
levied on a power of
attorney produced by
him before the District
Judge, Hassan.

2. Correspondence
ending with letter no: 31
& 5-8-03 from the Govt
Advocate in Mysore on
the subject.

D ✓
7L 907-909 21.9.03

Order thereon.

A power of
attorney dated 1st Sept. 02
was executed on a stamp
paper of the value of one
rupee by P. Raghavendra
Rao, appointing the pe-
titioner as his agent and
attorney to apply for and
obtain all the moneys due
to the former and remainin

in Court on his account realized or to be realized in the execution of the decree obtained by him against P. R. Nagaya Naidu in O.S. no: 825 of 1887 on the file of the Sub-Judge's Court, Bangalore, and to sign for further execution and documents all applications and grant all receipts and discharges as may be lawful and expedient.

2 In his case no: 37 of 1902-03 on the file of the District Judge, Hassan, the petitioner produced the power of attorney and applied for permission to draw certain money in deposit and for the issue of a warrant for the attachment of the pay of the judgment debtor. The District Judge in his order of 8.9.02 held that the power of attorney referred to more than one transaction and empowered the holder of it to act generally also in the matter of the execution of the decree and that the prefer

duty payable was Rs 5/-
under cl 46(c) Schedule I
of the Impose Stamp Regn
the payment of the necessary
duty and penalty, amounting
in all to Rs 44/-, was then
ordered and the petitioner
paid the amount. He now
appeals to Court, alleging
that the power gave au-
thority to the petitioner to
act on behalf of his old
father in the execution of
the decree in a single case
and was properly stamped
as falling under clause 46(b)
Schedule I, of the Stamp Regn
that the petitioner was not
given an opportunity to
explain his case, and that
the District Judge failed
to distinguish an act from
a transaction, and praying
for the refund of the duty
and penalty levied.

3. The Govt Advocate
who was consulted in the
matter has stated that the
power of attorney is properly
stamped under Article 46
cl (b) Schedule I of the Stamp
Regulation, that it does not

fall under cl (c) as it relates to a single transaction, that there is no provision in the Stamp Regn empowering the Chief Controlling Rev: Authority to order a refund of any excess of Stamp duty and penalty, as the applicant, instead of paying the duty and penalty as ordered by the Court, should have obtained the opinion of the Dy Comr under Sec: 31 of the Stamp Regn, and that Sec: 61 does not apply to the case in question.

4. Govt observe that a "transaction" as used in the Schedule of the Stamp Regn should be distinguished from an "Act", as many acts may be involved in a single transaction. The power of attorney in question relates to a single transaction, viz, the execution of a single decree and it therefore falls under cl 46 (b) and not (c), Schedule I of the Stamp Regn. The excess duty and penalty levied will therefore be refunded to the petitioner.

5. The opinion of the Govt Advocate that the Stamp Regn contains no provision authorizing a refund in such cases is clearly wrong. Section 45 of which ~~does~~ contains such a provision.

1. The Dy Comr, Hasan Dist
2. Registrar, Chief Court of Lucknow.
3. Govt Advocate in Lucknow.

D

No. PL-941

Govt Secretariat-

MYSORE ~~DEVASTHANAM~~,
Revenue
~~PETITION~~ DEPARTMENT,

Serial No. 5

The 25th Sep: 1903

ENDORSEMENT GRANTED TO P. Subba Rao, residing in Veliamarajendrapet, Bangalore city,

in reply to his Petition Registered No, 1605 dated 6.12.02, praying for the refund to him of the excess duty and penalty levied on a power of attorney produced by him before the District Judge, Hassan.

Petitioner is informed that the power of attorney referred to ~~relates has~~ having been decided to relate to a single transaction, ~~viz, the execution of a single decree, and that it~~ and there have been properly stamped under article 46, cl (b), Schedule I, of the Mysore Stamp Regulation, ~~I~~ orders have been issued to the Deputy Commissioner, Hassan directing the refund of the excess duty and penalty levied by the District Judge, Hassan, ~~have been ordered to be refunded and the order has been communicated to the Deputy Commissioner, Hassan District~~